

IN THE MATTER OF THE FACT-FINDING BETWEEN

The City of Dubuque: Public Employer	FACT-FINDING REPORT CEO # 229/Sector 2
and	Issued by:
The General Drivers and Helpers Union - Teamsters Local 421	Walter J. Foley On August 10, 2004

AppearancesFor the Public Employer

Mr. Randy Peck

For the Teamsters Local 421

Mr. Yingtao Ho

Mr. Dave Baker

Ms. Patty Trowbridge

Mr. Dave Birch

Mr. Randy Ludowitz

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PUBLIC EMPLOYMENT
RELATIONS BOARD**Introduction and Procedural History**

The city of Dubuque (hereinafter the City) is located in the northeast quadrant of The State of Iowa and, according to the figures provided by the City, its population had dropped from 61,932 in 1980 to 57,546 in 2000 (City Narrative p.34). The full-time, part-time, seasonal, temporary or limited term City employee categories represented by the *General Drivers and Helpers Union* Teamsters Local 421 (hereinafter Union) for collective bargaining purposes are listed in City Exhibit #1.

The parties began negotiating the terms and conditions of their relationship in the fall of 2004, and were unable to reach agreement after mediation. The undersigned was notified by the PERB of his selection by the parties as their Fact-Finder by letter on June 24, 2004, and the Hearing date of July 30, 2004, was mutually agreed upon by the parties.

The Hearing was held in Conference Room B in City Hall and City Hall is located at the corner of 13th Street and Central Avenue. Prior to its opening, an informal conference was held to discuss procedural and house-keeping matters such as the treatment of witnesses, the numbering

of exhibits, the submission of *Briefs*, their desires to present opening and/or closing statements, and the degree of formality to be observed during the course of the Hearing. The parties agreed that witnesses need not be administered oaths nor need they be sequestered prior to their testimony, that new exhibits be numbered by the Fact-Finder, that they would make opening and closing statements, and that they did not intend to submit Post Hearing Briefs. Prior to the close of the Hearing, the parties stipulated that they had been granted ample opportunities to argue their positions and respond to questions and issues raised during the Hearing. Following the Hearing, the undersigned Fact-Finder listened to the tape-recording of the Hearing and reviewed all of the submissions entered into the record prior to the issuance of this report.

Statutory Authority and Criteria.

The parties stressed that under the Public Employment Relationship Act (PERA) in the Code of Iowa at 20.22 Fact-Finders are expected to fashion their recommendations consistent with the statutory authority granted to Arbitration panels and, as quoted below at 9:

The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

- A. Past collective bargaining contracts between the parties including the bargaining that led up to the contract.*
 - B. Comparisons of wages, hours, and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to the factors peculiar to the area and the classification involved.*
 - C. The interest and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.*
 - D. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.*
- ... and those other factors relevant in the settlement of the dispute.*

When cited in this report, the Criteria will be referred to as: *bargaining history, comparability, public interest, and ability to pay.*

THE HEARING

The Hearing began at about ten-thirty in the morning (10:30 a.m.) and ended at approximately twelve-thirty (12:30 p.m.). The Union presentation followed the format of the *Argument and Exhibit* document it presented with the May 19, 2004, Telegraph Herald article

titled *DRA issuing record distributions* that was also accepted and entered into the record as U one (1) A at the start of the Hearing. The pages of the Union's *Argument and Exhibit* document were not numbered in consecutive order at the time of the Hearing and the page I later numbered one (1) listed the Union positions on each of the four unresolved issues as:

ARTICLE XIII-FUNERAL LEAVE

Section C(3): Add New Language: Upon approval of the immediate supervisor, employees may be granted up to three (3) hours with pay to attend the wake services of a member of the employee's immediate family as defined in Section C of this Article.

ARTICLE XXII-HOLIDAYS

Section 1: Add Martin Luther King, jr. Birthday.

ARTICLE XXVIII-CALLBACK

Paragraph 2-On Call Pay: Add New Language: Employees who are placed on-call by the City for 24 hours each day will receive, at their option, either four(4) hours compensatory time, or four (4) hours at their regular rate of pay for each weekend or holiday that they are on call.

ARTICLE XXXI-WAGE PLAN

Add: Effective July 1, 2004, long-term or temporary employees will receive \$.50 per hour in addition to their regular rate of pay as set forth in this Addendum after completing 3,500 continuous hours of work in a seasonal or temporary position covered by this Agreement.

On the following page, the City's response to each of the changes proposed by the Union was to *Continue with the existing language of the Agreement.*

The Union next referenced 9-b. *Comparison(s) of wages, hours and conditions of employment...*, giving consideration to factors peculiar to the area and the classifications involved located at what I numbered as page four (4) of their *Argument and Exhibit* document and went on to emphasize that *full weight* is to be given to external as well as internal comparisons. As its external comparability group, the Union chose eight (8) Cities in Eastern Iowa and the City of Des Moines. The Table on page six (6) lists their *population, miles away from Dubuque, # of Housing Units, number of units per capita, % in labor force, Median age, and per capita Income*. On page seven (7), the Union noted that: *despite the geographical distances, all of the selected external comparable(s) share similar economic conditions.*

The Union referenced the Table on page eight (8) to show that the *per capita tax base* i.e., the values of the single family homes, places Dubuque *in a better position than most other Eastern Iowa major cities to fund comparable wage and benefits proposals.*

The Union referenced the Table on page nine (9) to support its *Argument* that since the City *cannot point to a consistent pattern of internal settlements where every unit receives 10 holidays per year, the fact finder should look at external comparables.* The Table on page ten (10) was then referenced to show that: *Half of the comparable communities give MLK (Martin Luther King) day as a paid holiday* and that: *With the exception of Muscatine, every other external comparable community give(s) its general mixed unit at least 11 days in holidays.*

The Union used the Tables on pages eleven (11) and twelve (12) - amended to exclude the *Spouse Death-Child Death* columns when they were presented - to support its *Argument* that new language be added to Article XIII-Funeral Leave. The internal bargaining unit comparisons shown in the page eleven (11) Table were used to establish the fact that *Fire-Fighters* already *receive up to three (3) hours to attend wake service with pay: upon approval of the fire chief* and the external City comparisons shown in the page twelve (12) Table were used to establish the fact that Iowa City is the only City (other than Dubuque) that allows just one (1) day of *leave for other immediate family death.*

The *external comparables* Table on page thirteen (13) includes only the Units where the parties have agreed to provide standby pay and, within the Union *Argument* - presented on the same page - the only *internal comparable* Unit, the Operating Engineers, receives six (6) hours of standby pay per week. On page fourteen (14), the Union presents the *Argument* that: *Along with Marshalltown, the Local 421 unit is the only one that potentially has to work on-call for both weekdays and weekends, but do not get paid for weekday on-call work.* The Union also had Mr. Randy Ludowitz (who identified himself as a Truck Driver in the Sewer Department) testify to the fact that he is expected to respond within one-half (1/2) hour to a call *to return to work* and that his understanding is that he is on-call during the week as well as on week-ends.

The Union's final *Argument* is that employees who do comparable work should receive comparable pay. While full and part-time Transit Aids do comparable work and share the same Wage Plan, full-time and seasonal/temporary employees have different Wage Plans. The one for

full-time Laborer I, Laborer II, Sanitation Driver, and Truck Driver is the same as the one for full and part-time Transit Aid and the one for seasonal/temporary appears in their Contract on pages 26, 27, and 28 while the Wage Plan for seasonal/temporary Laborer I, Laborer II, Sanitation Driver, and Truck Driver City employees appears on pages 33 and 34 of the Contract included in the City *Exhibit* note-book.

The Union argument is that it is unreasonable for the City to have a separate Wage Plan for seasonal/temporary employees when the work they do is comparable to the work done by its full and part-time employees. In support of the Union position, Mr. Dave Baker (President, Teamster's Union, Local #421) had Ms. Patty Trowbridge (a seasonal/temporary Laborer II Parks Department employee for fourteen (14) years) describe the similarities in her duties and those of full-time City employees with the same classification. Her testimony was that there is little (if any) difference. Mr. Baker then asked Mr. Dave Birch (a long-term employee of the City and Lead Mechanic in the Parks Division) if there was any difference in the work performed by full-time and seasonal/temporary Truck Drivers. His testimony was also that there was little (if any) difference.

Following their testimony, the Union noted that temporary/seasonal employees work from Mid-April to either Mid-October or Mid-November and, to qualify for the \$.15 per hour in addition to their regular rate of pay, they have to complete 3,500 continuous hours of work in a temporary position and it takes about three (3) years to qualify. Next, the Union discussed the disparities in the seasonal/temporary and full-time Laborer I, Laborer II, Sanitation Driver and Truck Driver and part-time Transit Aid shown in the Table on page fifteen (15) as hourly wage rates and in the Table on page sixteen (16) as percentages in its *Argument and Exhibits* document. The Union proposal to add fifty cents (\$.50) to the fifteen cent (\$.15) figure in the Addendum B Wage Plan was described as the next step.

The Union contention is that when the wage rate of one group of employees is far behind other comparable employees, in this case, seasonal/temporary employees, the need to catch up overshadows the need to maintain a settlement pattern that is consistent with the City's other bargaining Units.

At the close of its presentation, the Union described the *background supporting materials* for its positions on the four (4) issues that were the subject matters in its *Argument and Exhibits* document before asking if there were any questions. The City took that opportunity to note that the Cities cited as *external comparables* by the Union differed from those that were used in the past. The City also noted that the *internal comparables* used to support its *PROPOSAL 1: Martin Luther King Holiday* and *PROPOSAL 2: Grant Employees Up to 3 Hours off With Pay to Attend Wake Services* included Assessor Office employees and went on to clarify that they are not City employees. The terms and conditions of their employment are negotiated by a *Compensation Board* and should not be included with the five (5) City bargaining Units when making internal comparisons in support of its proposals.

The City described its presentation as a summarization of the contents of the *Narrative* and *Exhibits* note-books it submitted prior to the opening of the Hearing. For example, rather than describing the positions held by the 113 full-time employees in this bargaining Unit in the *Opening Statement* in its *Narrative* note-book, the City noted that the descriptions can be found in City Exhibit #1 and rather than re-stating the positions of the parties, the City noted that they are spelled out in Exhibits #2 and #3 as their July 21, 2004 positions. In turn, *City Exhibits #4* and #5 were referenced to cost the issues already agreed to by the City and the additional cost to the City for the Union wage, on-call, and holiday proposals.

The remainder of the City's summary of its *Opening Statement Narrative* and supporting *Exhibit* note-books was devoted to an explication of its position that: *the wage and benefit package provided to employees covered by this bargaining unit not only compares favorably with the wage and benefit package extended to employees in the other large cities in Iowa, it compares favorably with the wage and benefit package provided to other City of Dubuque employees and that there is no justification for this bargaining unit to receive a compensation package in Fiscal Year 2005 that is higher than the compensation package to be received by 408 of the City's 521 full-time employees.*

The supporting *Arguments* for the City positions of no change in Article XXVIII-CALL BACK (ON CALL PAY) and no change in ADDENDUM A-WAGE PLAN (City Exhibit #2) are presented in its *Narrative* and *Exhibits* note-books under the heading Wages and, when they were

summarized at the Hearing, the annual cost of accepting the Union's *on-call pay* proposal was estimated to be \$4,300 and the annual cost of accepting the Union's *\$.50 per hour increase in the additional compensation provided to seasonal employees who have worked more than 3,500 hours* proposal would be \$7,150. It was also noted that these totals do not include the additional 13.4% cost as the City's contribution to IPERS and Social Security.

The City *Argument* for its no change in Article XXII-HOLIDAYS position is presented in its Narrative note-book under the heading Holidays and, when it was summarized at the Hearing, the City noted that the annual cost of accepting the Union's Holiday proposal would be \$15,700 and this total does not include the additional 13.4% cost of the City's contribution to IPERS and Social Security (City Exhibit #5).

The City *Argument* for its no change in Article XIII-FUNERAL LEAVE position is presented in its Narrative note-book under the heading Wages and, in its summarization, the City noted that of its bargaining and non-bargaining Units, only the Firefighter's Association receives 3 hours of paid time off to attend a Wake Service and that none of the cities in its comparability group provide that benefit (City Exhibit's #35 and # 36). The issues already resolved to by the Union and the City will raise the annual cost of their Agreement from 3.47 to 3.62 percent (City Exhibit #4) and, when the cost of the Union positions on the issues that remain unresolved are added to the existing total, the figure rises to 4.29% (City Exhibit # 5).

DISCUSSION AND RECOMMENDATIONS

The issues that were presented at the Hearing will be discussed in the order of their appearance in their Contract and not in the order they were argued by the parties. It is fair to say that both parties saw the Hearing as an opportunity to have a third party neutral hear their positions on the issues that remained unresolved and, after examining their arguments and the exhibits submitted to support them in light of the PERA criteria listed above, assist in their resolution by making recommendations that are consistent with *the public policy of the State to promote harmonious and cooperative relationships between government and its employees.*

ARTICLE XXII-HOLIDAYS

The Union position was that the birthday of Martin Luther King Jr. MLK day) be added as a holiday while the City proposal was to *continue with the existing language of the Agreement.*

The Union argument was that *with the exception of Muscatine, every other external comparable community give(s) its mixed unit at least 11 days in holidays and since the internal comparables (listed in its Table on p.9) do not favor either offer, the fact finder should look at external comparables.* The Union Table on page ten (10) shows that four (4) of the eight (8) other Cities listed as comparable grant MLK day as a holiday.

The City Argument was that all of its full-time employees receive ten (10) holidays per year (City Narrative note-book p.36). It would be disruptive to the functioning of the City to grant the members of one of its five (5) bargaining Units a holiday that is not shared by its other employees. A holiday provides payment when no services have been rendered and is therefore an additional cost (City Narrative note-book p.37). The cost is shown in City Exhibit #5 as \$15,700 not including the additional 13.4% cost as its contribution to IPERS and Social Security. City Exhibit #34 shows that of the six (6) other Cities listed as *externally comparable*, three (3) do and three (3) do not grant MLK day as a holiday.

After giving consideration to all of the PERA criteria and excluding the employees in the Assessor's Office when making my internal and external comparisons, it is my recommendation that *in light of the factors peculiar to the area and the classifications involved*, the City's established pattern of consistency within its bargaining units and between its bargaining and non-bargaining unit employees is best supported.

Recommendation

That the City proposal to *continue with the existing language of the Agreement* be accepted by the Union.

ARTICLE XIII-FUNERAL LEAVE

The Union position is that the new language to be added to the Agreement that allows the granting of up to three (3) hours with pay to attend the wake services of a member of the employee's immediate family be added to the one day already granted to City employees and considered three (3) additional hours of paid funeral leave. The City proposal is to *continue with the existing language of the Agreement.*

After considering their *Arguments* and *Exhibits* and eliminating the Assessor Office employees, the uniqueness of the hours of employment of the Firefighters who receive three (3)

additional hours of paid funeral leave as judged to be a *factor peculiar to the classifications involved* in the internal Units.

Recommendation

That the City proposal to *continue with the existing language of the Agreement* be accepted by the Union.

ARTICLE XXVIII-CALLBACK

The Union framed its *Argument* as not one of the employees it represents receiving *standby pay* but as one of *how much standby pay* they should receive. The column headed *On Call Pay Per Day* in the Table on page thirteen (13) of the *Union Argument and Exhibits* document was described as most relevant to its position on the issue. The Union explained that the two Units it defined as *statistical outliers* were removed and concluded that, *along with Marshalltown, the Local 421 unit is the only one that potentially has to work on-call for both weekdays and weekends, but do not get paid for weekday on-call work* even though they have to be available when a scheduled employee does not report for work.

The City *Argument* is that many of its *continuous service* Unit employees are subject to callback or being on-call without receiving any additional compensation (City Exhibit #28). City Exhibit #29 defines *callback* and, under the provisions of the current contract, the snow removal and sewer maintenance employees represented by this bargaining Unit receive two (2) hours of *compensatory time* for each weekend and holiday they are on-call and, when they are on-call for both snow removal and sewer maintenance, they receive four (4) hours. When they have to report for work, they receive two hours of pay at their overtime rate.

The six (6) other employees who receive *callback pay* are the water distribution employees who are on-call for an entire week. They receive six (6) hours of pay for each full week they are on-call and, in contrast to the sewer maintenance employees who wear pagers only on weekends, they wear cellular phones for the full week they are on-call. The Union's Standby Pay position is discussed in the City *Narrative* note-book under the heading Wages and, in its *Exhibits* note-book, its cost is estimated to be \$4,300 in City Exhibit #5.

Recommendation

That the City proposal to *continue with the existing language of the Agreement* be accepted by the Union.

ARTICLE XXXI-WAGE PLAN

In its *Narrative* note-book, the City cites the passage of the PERA as the way *the public policy of the State to promote harmonious and cooperative relationships between government and its employees* was enacted in Iowa. The passage of the PERA provided a new State context for the City policy of treating all of its employees, whether they are or are not represented by a bargaining unit, equally. The City policy of equality, when applied to the employees that are not represented by collective bargaining process, is its promise that the terms and conditions of their employment will not differ from those of City employees who are represented by that process. The City also promises its bargaining Unit member employees that it will not enter into an agreement with the members of any other bargaining unit that significantly deviates from the agreement it reaches with the members of the bargaining unit that arrives at the first negotiated settlement (City *Narrative* p.25).

On page twenty-six (26), the City cites its promise to maintain internal consistency in all of its voluntary settlements as key to successful collective bargaining and, as a practice, the City's policy of reaching across-the-board wage increases that exceed the increase in the cost of living has resulted in labor relationships characterized by high trust levels.

City Exhibit ten (10) shows the historical success of the City's effort to maintain *Parity* between its non-bargaining and bargaining Unit employee *compensation packages* from the Fiscal Year (FY) 1984 to the FY 2004, in yearly and total percentage figures. As further evidence of the success of the City policy, all of its bargaining Units have agreed to a 3.47% across-the-board increase in their FY 2005 Agreements. As evidence of the flexibility of the City policy, the parties have already agreed to changes in their 2005 Agreement that will increase the City's 3.47% uniform settlement target to 3.62% for the employees represented by this Union (City *Narrative* p.2 and City Exhibit #4).

With this background and the PERA *bargaining history, comparability, public interest, and ability to pay* Criteria in mind, the Union *Argument* is that the gap between the hourly wage

rates of Permanent and Part Time City employees and Seasonal/Temporary employees is unjustified. The Union characterized its proposal to add fifty cents (\$0.50) to the *existing fifteen cent (\$0.15) per hour in addition to their regular rate of pay after completing 3,500 continuous hours of work in a temporary position covered by this Agreement* as a way to start closing the gap in the Wage Plan for full and part-time City employees and the Wage Plan for Seasonal/Temporary City employees found in Appendix B of their Agreement. In support of its position, the Union also had witnesses describe the similarities in the work performed by Seasonal/Temporary and Permanent full-time Laborers, Sanitation Drivers, and Truck Drivers.

The Union and the City were represented at the Hearing by experienced bargainers who are well aware of the fact that applying across-the-board percentage rate increases to widely disparate Wage Plans increases their disparities over time. According to my calculations, the top base hourly wage rate for a Seasonal/Temporary Laborer increased \$.77 while the top hourly wage rate for a Driver increased \$1.02 for a \$.25 increase in the cumulative difference in their wage rate over its three year duration of their 2001-2004 Agreement. In contrast, the top hourly wage rate for a Permanent Laborer increased \$1.61, the top hourly wage for a Permanent Truck Driver increased \$1.63, the top hourly wage for a Sanitation Truck Driver increased \$1.74, and the top hourly wage rate for a full-time Transit Aid/Clerk increased \$1.48, (my understanding of the record is that part-time Transit Aids are paid at the same hourly rate as full-time Transit Aids).

Like the Fact-Finders and Arbitrators that have preceeded me, I prefer to use precise figures as substitutes for vague and artificially contrived rates. Keeping the *factors peculiar to the area and the classifications involved* and the cost of the issues the parties have already agreed to, it is recommended that \$.25 be added to the \$.15 figure that went into effect July 1, 2000. The cost of its acceptance by the parties is estimated to be \$3,575 or one-half of the cost of the Union position on this issue (City Exhibit #5).

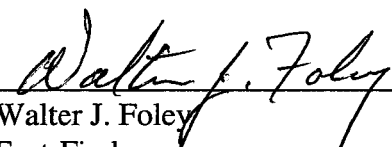
This recommendation is not made to close the gap between Part-Time Transit Aid and Seasonal/Temporary City employees as argued by the Union nor is it made to thwart the policy of attempting to treat all of its employees equally in terms of their basic compensation packages as argued by the City. It is made to adjust the over time disparity in the Wage Plan for full-time City

employees and the Wage Plan for Seasonal/Temporary City employees found in Appendix B of their Agreement caused by the consistent application of *across-the-board* percentage increases.

Recommendation

Effective July 1, 2004, temporary employees will receive \$.40 per hour in addition to their regular rate of pay as set forth in this Addendum after completing 3,500 continuous hours of work in a temporary position covered by this Agreement.

Signed and dated in Iowa City, Iowa

 8-10-04
Walter J. Foley
Fact-Finder

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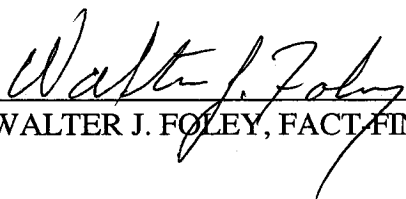
CERTIFICATE OF SERVICE

I certify that on August 10, 2004, I served the foregoing Fact-Finding Recommendations upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

For the City of Dubuque:
Mr. Randy Peck
50 W. 13th Street
Dubuque IA 52001

For the Union:
Mr. Dave Baker
195 E. 14th Street
Dubuque IA 52001

I further certify that on August 10, 2004, I will submit this Report for filing by mailing it to the Iowa Public Employment Relations Board, 514 East Locust, Suite 202, Des Moines, Iowa 50309.


WALTER J. FOLEY, FACT-FINDER